

IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF MULTNOMAH

JOSEPH BRINKMANN, both on behalf of
himself individually and, in addition, on behalf
of the other similarly situated employees,

Plaintiff,

vs.

ABM ONSITE SERVICES - WEST, INC., a
Delaware corporation,

Defendant.

Case No. 17CV06683

SUMMONS

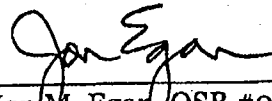
NOTICE TO DEFENDANT:
READ THESE PAPERS
CAREFULLY!

You must "appear" in this case or the other side will win automatically. To "appear" you must file with the court a legal document called a "motion" or "answer." The "motion" or "answer" must be given to the court clerk or administrator within 30 days along with the required filing fee. It must be in proper form and have proof of service on the plaintiff's attorney or, if the plaintiff does not have an attorney, proof of service on the plaintiff.

If you have questions, you should see an attorney immediately. If you need help in finding an attorney, you may contact the Oregon State Bar's Lawyer Referral Service online at www.oregonstatebar.org or by calling (503) 684-3763 (in the Portland metropolitan area) or toll-free elsewhere in Oregon at (800) 452-7636.

DATED this February 24, 2017

JON M. EGAN, P.C.



Jon M. Egan, OSB #002467
Attorney for Plaintiff

2/16/2017 8:29:30 PM
17CV06683

IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF MULTNOMAH

JOSEPH BRINKMANN, both on behalf of
himself individually and, in addition, on behalf
of the other similarly situated employees,

Plaintiff,

vs.

ABM ONSITE SERVICES - WEST, INC., a
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Case No.

COMPLAINT

Oregon Wage and Hour Claims

Damages estimated at \$999,999.99

Jury Trial Requested

NOT SUBJECT TO MANDATORY
ARBITRATION

Filing fee of \$531 per ORS 21.160(1)(c)

INDIVIDUAL AND CLASS ACTION COMPLAINT

1.

Joseph Brinkmann (hereinafter "Plaintiff") complains as follows against ABM Onsite Services - West, Inc., a Delaware corporation (hereinafter "ABM"), both on behalf of himself individually and, in addition, on behalf of the other similarly situated employees.

2.

This is an action under state wage and hour claims for certain present and former employees of ABM to recover unpaid wages, penalty wages, and attorney fees, costs and disbursements (and pre- and post-judgment interest thereon), as well as

1 equitable relief. All allegations herein are made to the best of Plaintiff's and his
 2 counsel's good-faith knowledge, information and belief, based upon the evidence
 3 adduced to date, and Plaintiff reserves the right to amend the Complaint upon the
 4 discovery of additional facts.

5 **PARTIES**

6 3.

7 At all material times, Plaintiff and the Class members were employees of ABM.

8 4.

9 Defendant ABM is a Delaware corporation doing business in Multnomah County,
 10 Oregon and elsewhere.

11 **COMMON FACTS**

12 5.

13 ABM often issued checks to plaintiff and Class members after the regular payday
 14 on which such checks were due. In doing so, ABM failed to pay them the minimum
 15 wage on payday, when it was due.

16 6.

17 ABM deducted Oregon Workers' Benefit Fund assessments from plaintiff and the
 18 Class members' wages for vacation, sick time, and holiday pay hours. These
 19 deductions were illegal.

20 7.

21 ABM failed to pay plaintiff and the Class members all earned and unpaid wages
 22 within the statutory deadline to do so upon termination of their employment
 23 (including, but not limited to, pay for accrued vacation hours).

CLASS ACTION ALLEGATIONS

8.

ABM engaged in acts and practices that violated the Class members' rights under Oregon statutory and common law. This action is brought on behalf of all current and former ABM employees who received a paycheck for work performed in Oregon on or after February 16, 2011.

Numerosity

9.

The Class is so numerous that joinder of all members is impractical, consisting of an estimated hundreds of persons.

Commonality

10.

There are questions of law and fact common to the Class, which predominate over any issues involving only individual Class members. The principal questions are:

- a. What Oregon Workers' Benefit Fund assessment rates ABM withheld from its employees' paychecks, what rates it was supposed to withhold, and whether it had notice of the proper rates;
- b. What ABM's payday was, whether its common policies and procedures resulted in paying its employees at least the Oregon minimum wage on payday, whether its common policies and procedures resulted in paying its employees all earned and unpaid wages on payday, and whether such violations were willful;
- c. Whether ABM's common policies and procedures resulted in paying its

- 1 employees all earned and unpaid wages (including but not limited to
2 accrued vacation hours) within the statutory deadline upon termination of
3 their employment, and whether such violations were willful; and
4 d. What remedies are available for the above-listed violations.

5 **Typicality**

6 11.

7 Plaintiff's claims are typical of those of the other Class members because:

- 8 a. Plaintiff is a member of the Class.
9 b. Plaintiff's claims stem from the same practice or course of conduct that
10 forms the basis for the Class claims.
11 c. All of the Class members' claims are based on the same facts and legal
12 theories.
13 d. There is no antagonism between the interests of Plaintiff and the Class
14 members, because their claims are for damages provided to each Class
15 member separately by statute or the common law.

16 **Adequacy of Representation by Plaintiff**

17 12.

18 Plaintiff will fairly and adequately protect the interests of the Classes because:

- 19 a. There is no conflict between Plaintiff's claims and those of the other Class
20 members.
21 b. Plaintiff has retained counsel experienced in handling class actions
22 involving wage and hour law, who will vigorously prosecute this litigation.
23 Plaintiff's counsel has already committed substantial time and resources

1 towards this case and remains willing and able to devote whatever
 2 additional future time and resources are necessary to pursue this litigation
 3 to completion.

- 4 c. Plaintiff's claims are typical of the claims of the Class members in that their
 5 claims stem from the same practice and course of conduct that forms the
 6 basis of the Class claims.

7 **Compliance with ORCP 32 H**

8 13.

9 Plaintiff has complied with the requirements of ORCP 32 H because his counsel
 10 mailed a prelitigation notice and demand to ABM at least 30 days before the
 11 commencement of this action.

12 **Superiority of Class Action**

13 14.

14 Class resolution of this case is superior to other available methods for its fair and
 15 efficient adjudication, for at least the following reasons:

- 16 a. The prosecution of separate actions by the Class members could both result
 17 in inconsistent adjudications establishing incompatible pay practices and,
 18 as a practical matter, dispose of the legal claims of Class members who are
 19 not parties to such separate adjudications or impede their ability to protect
 20 their interests.
- 21 b. Plaintiff is seeking declaratory and injunctive relief in addition to damages.
- 22 c. The common questions of law and fact described above predominate over
 23 questions affecting only individual members, and the questions affecting

1 individuals primarily involve only calculations of individual damages.

- 2 d. Individual class members would have little interest in controlling the
3 litigation due to the relatively small size of most claims, the relatively
4 unsettled nature of this area of the law, the complexity of the claims, the
5 expense of the litigation, and because the named Plaintiff and his lawyer
6 have already invested significant resources in the case and will continue to
7 vigorously pursue the claims on behalf of the class members.
- 8 e. To plaintiff and his counsel's knowledge, no other similar litigation has
9 been commenced, but if commenced, it could be coordinated under ORCP
10 32 K.
- 11 f. This is a desirable forum because ABM does business in this county and
12 many class members reside here.

13 **FIRST CLAIM FOR RELIEF**

14 **Oregon Minimum Wage Claim**

15 15.

16 All previous paragraphs are incorporated by reference herein.

17 16.

18 Pursuant to ORS 653.025, ABM was required to pay Plaintiff and the Class
19 members at least the amount of the applicable Oregon minimum wage, when those
20 wages were due, but willfully failed to do so.

21 17.

22 Plaintiff and the Class members are entitled to collect the difference between their
23 wages received when due and the Oregon minimum wages due in an amount to be

1 proven at trial, together with attorney fees, costs and disbursements, as well as pre-
 2 and post-judgment interest and the 30 days of statutory penalty wages provided by
 3 ORS 653.055 and 652.150.

4 **SECOND CLAIM FOR RELIEF**

5 **Oregon Overtime Claim**

6 18.

7 All previous paragraphs are incorporated by reference herein.

8 19.

9 Pursuant to ORS 653.261, ABM was required to pay Plaintiff and the Class
 10 members one and one half times their regular rate of pay for all hours worked in
 11 excess of 40 in a given workweek, when those wages were due, but willfully failed to
 12 do so.

13 20.

14 Plaintiff and the Class members are entitled to collect the difference between the
 15 wages received when due and the overtime wages due in an amount to be proven at
 16 trial, together with attorney fees, costs and disbursements, as well as pre- and post-
 17 judgment interest and the 30 days of statutory penalty wages provided by ORS
 18 653.055 and 652.150.

19 **THIRD CLAIM FOR RELIEF**

20 **Oregon Unpaid Wages Upon Termination Claim**

21 21.

22 All previous paragraphs are incorporated by reference herein.

23 ///

22.

Pursuant to ORS 652.140, ABM was required to pay Plaintiff and the Class members all wages due by the statutory deadline upon termination of their employment but willfully failed to do so.

23.

Plaintiff and the Class members are entitled to collect all wages remaining due, in an amount to be proven at trial together with attorney fees, costs and disbursements, as well as pre- and post-judgment interest, and the 30 days of statutory penalty wages provided by ORS 652.150.

FOURTH CLAIM FOR RELIEF

Oregon Wrongful Deductions Claim

24.

All previous paragraphs are incorporated by reference herein.

25.

Pursuant to ORS 652.610, ABM was prohibited from deducting certain amounts from the paychecks of Plaintiff and the Class members but willfully did so.

26.

Plaintiff and the Class members are entitled to (for each violation) the greater of \$200 or actual damages in an amount to be proven at trial, pursuant to ORS 652.615, together with attorney fees, costs and disbursements, as well as pre- and post-judgment interest.

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FIFTH CLAIM FOR RELIEF

Oregon Unpaid Wages Claim

27.

All previous paragraphs are incorporated by reference herein.

28.

Pursuant to ORS 652.120, ABM was required to pay Plaintiff and the Class members all wages due, when those wages were due, but willfully failed to do so.

29.

Plaintiff and the Class members are entitled to collect the wages due in an amount to be proven at trial, together with attorney fees, costs and disbursements, as well as pre- and post-judgment interest.

JURY DEMAND

Plaintiff hereby demands a trial by jury on all claims for which it is available.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff requests that the Court certify the Rule 32 class as indicated herein; award him and the other Class members such actual, statutory, penalty, liquidated and other damages as they may be individually entitled to, as set forth by category above and in amounts to be proven at trial; award the attorney fees, costs and expenses of suit of Plaintiff and the other Class members; order ABM to pay pre-judgment and post-judgment interest on all amounts due to Plaintiff and the other Class members as a result of their claims; declare ABM's violations as enumerated herein and enjoin ABM from committing similar violations in future; and order such further or alternative legal and equitable relief as the Court deems

1 appropriate.

2

3 DATED this 16th day of February, 2017

JON M. EGAN, P.C.

4

s/ Jon M. Egan

5

Jon M. Egan, OSB #002467
Attorney for Plaintiff

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Page 10 – COMPLAINT

JON M. EGAN, PC
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LAKE OSWEGO OR 97034-3009
TELEPHONE: (503) 697-3427 • FAX: (866) 311-5629
INFO@EGANLEGALTEAM.COM

Exhibit 1
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**Service of Process
Transmittal**

02/27/2017

CT Log Number 530768227

TO: Cecilia Sanchez
ABM Industries Incorporated
8101 W Sam Houston Pkwy, Ste 150
Houston, TX 77072

RE: Process Served in Oregon

FOR: ABM Onsite Services - West, Inc. (Domestic State: DE)

ENCLOSED ARE COPIES OF LEGAL PROCESS RECEIVED BY THE STATUTORY AGENT OF THE ABOVE COMPANY AS FOLLOWS:

TITLE OF ACTION: JOSEPH BRINKMANN, both on behalf of himself individually and, in addition, on behalf of the other similarly situated employees, Pltf. vs. ABM ONSITE SERVICES - WEST, INC., etc., Dft.

DOCUMENT(S) SERVED: Reply Envelope, Letter, Summons, Complaint(s), First Request(s), Exhibit(s), Cover Sheet, Order, Attachment(s), Waiver(s)

COURT/AGENCY: Multnomah County Circuit Court, OR
Case # 17CV06683

NATURE OF ACTION: Employee Litigation

ON WHOM PROCESS WAS SERVED: C T Corporation System, Salem, OR

DATE AND HOUR OF SERVICE: By Regular Mail on 02/27/2017 postmarked: "Not Post Marked"

JURISDICTION SERVED : Oregon

APPEARANCE OR ANSWER DUE: Within 30 days (Document(s) may contain additional answer dates)

ATTORNEY(S) / SENDER(S): Jon M. Egan
JON M. EGAN, P.C.
547 Fifth Street
Lake Oswego, OR 97034-3009
(503) 697-3427

ACTION ITEMS: SOP Papers with Transmittal, via UPS Next Day Air , 1Z0399EX0114501826
Image SOP
Email Notification, SOP Group ServiceofProcess@abm.com
Email Notification, Tricia Donnell tricia.donnell@abm.com
Email Notification, Rich LeBlanc richard.leblanc@abm.com
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